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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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SAM ARMAN,

Plaintiff and Appellant,

v.

ALI POOJANI et al.,

Defendants and Respondents.

C067227

(Super. Ct. No.  
34201000088655CUUDGDS)

Plaintiff Sam Arman brought an unlawful detainer action (Code Civ. Proc., § 1161 et seq.) against defendants, Ali Poojani and his wife, alleging defendants had failed to pay rent as promised.

The trial court granted defendants' motion for judgment on the pleadings, ruling that defendants are entitled to remain in possession of the premises, and to recover attorney fees and costs. It ultimately awarded defendants \$14,587.50 in attorney fees, pursuant to the reciprocal application of a provision in the parties' lease agreement that provided, in a suit brought for the recovery of rent or the recovery of the premises,

"Lessee shall pay to said Lessor a reasonable sum as and for attorney's fees . . . ."

In this pro se appeal, plaintiff contends that the trial court erred in awarding defendants attorney fees pursuant to Civil Code<sup>1</sup> section 1717, and awarded fees in an unreasonable amount. We disagree and affirm the judgment.

#### BACKGROUND

This case involves a long-term lease agreement. Plaintiff owns property on which defendants own and operate a gas station and mini market. In 1997, the parties entered into a written agreement whereby they agreed defendants would take over the existing lease between plaintiff and a former tenant. The attorney fees clause at issue in this appeal appears in an agreement between the parties entitled "Original Lease Terms" (in which plaintiff is defined as "Lessor" and defendants are defined as "Lessee") and states: "That in each suit brought for the recovery of any rent due hereunder, or for the recovery of the possession of said demised premises, or for the breach of any of the terms, conditions or covenants of this lease, wherein said Lessor shall prevail, said Lessee shall pay to said Lessor a reasonable sum as and for attorney's fees therein, the amount of which shall be determined by the court in such suit and added to and become part of the judgment therein."

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<sup>1</sup> Unspecified statutory references are to the Civil Code.

In 2010, plaintiff filed this unlawful detainer action against defendants, seeking possession of the premises, past due rent, and reasonable attorney fees.<sup>2</sup> Defendants answered, and raised various affirmative defenses.

Simultaneous with their trial brief, defendants filed a motion for judgment on the pleadings, asserting that the court lacked jurisdiction to hear the matter as a summary unlawful detainer action because plaintiff failed to allege nonpayment of rent within the year prior to filing (Code Civ. Proc., § 1161, subd. (2) [three-day notice to quit “may be served at any time within one year after the rent becomes due”]), and sought late payment fees and interest not recoverable under the lease.

The court granted defendants’ motion for judgment on the pleadings without leave to amend, and ruled defendants were entitled to attorney fees, in an amount to be determined.

Defendants filed a memorandum of costs, and a noticed motion seeking an award of \$18,576 in attorney fees. In support of the motion, defendants submitted detailed invoices prepared by the law firm representing them, the resumes of the attorneys performing work on the matter, and a declaration by one attorney describing the work performed, his experience, and billing rate.

Plaintiff opposed the motion on the grounds the original lease provided only for *his* recovery of attorney fees, and the

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<sup>2</sup> This was not the first unlawful detainer action initiated by plaintiff against defendants.

attorney fees sought were unreasonable because the lawsuit was relatively brief, and required preparation of few documents.

After a hearing (the transcript of which is not in the record on appeal), the trial court ruled the attorney fee provision, although not "mutual in its express terms," is rendered mutual by virtue of section 1717, and defendants are entitled to recover their attorney fees as the prevailing party.

The court also found the hourly rates claimed by defendants for their attorneys are reasonable and, after considering their "detailed bills and the subject matter, pleadings, papers, and arguments of counsel," it awarded defendants \$14,587.50 in attorney fees.

#### DISCUSSION

##### I

##### *The Court Did Not Err In Awarding Attorney Fees*

The determination of the legal basis for an award of attorney fees is a question of law which we review de novo. (*Drybread v. Chipain Chiropractic Corp.* (2007) 151 Cal.App.4th 1063, 1069-1070.)

Section 1717 states in part: "(a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs. [¶]

Where a contract provides for attorney's fees, as set forth above, that provision shall be construed as applying to the entire contract, unless each party was represented by counsel in the negotiation and execution of the contract, and the fact of that representation is specified in the contract. [¶]

Reasonable attorney's fees shall be fixed by the court, and shall be an element of the costs of suit."

This unlawful detainer action, based as it was upon defendants' alleged failure to pay the agreed-upon rent, constitutes a contract-based action upon which section 1717 attorney fees may be awarded (cf. *Drybread v. Chipain Chiropractic Corp.*, *supra*, 151 Cal.App.3d at pp. 1073-1076), and there is no question that defendants were the prevailing parties by virtue of the trial court entering judgment in their favor.

Plaintiff argues the trial court erred because the lease attorney fee provision is "not mutual." He is wrong. Where a contract provides a right to attorney fees to one party but not the other, section 1717 creates a statutory reciprocal right to attorney fees in all parties to the contract. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 610.) "The primary purpose of section 1717 is to ensure mutuality of remedy for attorney fee claims under contractual attorney fee provisions" and "the effect of section 1717 is to allow recovery of attorney fees by whichever contracting party prevails, 'whether he or she is the party specified in the contract or not' (§ 1717, subd. (a))." (*Santisas*, at pp. 610-611.)

We also reject plaintiff's suggestion that he may escape the mutual application of the attorney fee provision by operation of the second paragraph of 1717, subdivision (a) ("Where a contract provides for attorney's fees, as set forth above, that provision shall be construed as applying to the entire contract, unless each party was represented by counsel in the negotiation and execution of the contract, and the fact of that representation is specified in the contract") because defendants were represented by counsel. There is no specific language in the "Original Lease Terms" agreement indicating that "each party was represented by counsel in the negotiation and execution of the contract" as required for this subdivision to apply. Moreover, this provision does not limit the reciprocal application of section 1717; it was added to allow the parties to limit the availability of attorney fees in connection with a bargained-for contractual indemnity clause. (See *Myers Building Industries, Ltd. v. Interface Technology, Inc.* (1993) 13 Cal.App.4th 949, 970-973.) In any event, plaintiff has not met his burden on appeal of showing how this paragraph applies in this case to prevent an award of attorney fees to defendants. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [it is a cardinal principle of appellate review that error must be affirmatively shown].)<sup>3</sup> Accordingly, we conclude the trial court did not err.

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<sup>3</sup> An appellant's burden includes: (1) providing an adequate record that affirmatively demonstrates error; (2) supporting all

## II

### *The Trial Court Did Not Abuse Its Discretion*

#### *In Determining The Amount Of Attorney Fees*

Plaintiff appears to contest the amount of the attorney fee award; his brief suggests the trial court allowed defendants to recover some attorney fees that were not "within the scope and framework of the case and should be verified."

Trial courts have broad discretion in determining the amount of a reasonable attorney fee award, and that determination is necessarily ad hoc and must be resolved on the particular circumstances of each case. (*Meister v. Regents of University of California* (1998) 67 Cal.App.4th 437, 452.) In exercising its discretion, a trial court may accordingly "consider all of the facts and the entire procedural history of the case in setting the amount of a reasonable attorney's fee award." (*Ibid.*) An attorney fees award "'will not be overturned in the absence of a manifest abuse of discretion, a

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appellate arguments with legal analysis and appropriate citations to the material facts in the record; and (3) showing exactly how the error caused a miscarriage of justice, else his or her contentions are deemed forfeited. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239-1240; *In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337; *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.)

Lack of legal counsel does not entitle a litigant to special treatment (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795); a pro se litigant is held to the same rules of procedure as an attorney (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985).

prejudicial error of law, or necessary findings not supported by substantial evidence. [Citations.]' [Citation.]" (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 894.)

In reviewing the trial court's exercise of its discretion here, we also recognize that "[t]he 'experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.'" (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.)

Plaintiff has not shown that the trial court abused its discretion. To the contrary, the record indicates the court thoughtfully considered all the materials before it on defendants' motion for attorney fees, and declined to award defendants everything they sought. There was no abuse of discretion.

#### DISPOSITION

The judgment is affirmed. Defendants shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278 (a)(1)(2).)

We concur: ROBIE, J.

HULL, Acting P. J.

MURRAY, J.